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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 MICHAEL HIGGINBOTHAM,  
15 Defendant.  
16

No. CR 10-703 MMC

**ORDER DENYING DEFENDANT'S  
MOTION FOR APPOINTMENT OF  
COUNSEL; GRANTING REQUEST FOR  
LEAVE TO FILE SUPPLEMENT TO  
MOTION**

17 Before the Court are two motions by defendant Michael Higginbotham: (1) a "Motion  
18 for Appointment of Counsel. 2255," filed August 3, 2011, and (2) a motion titled  
19 "Higginbotham seeks leave to brief his Section 2255," filed October 6, 2011. Having read  
20 and considered the above-referenced motions, the Court rules as follows.

21 The Sixth Amendment's right to counsel does not apply in habeas actions. Knaubert  
22 v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986), cert. denied, 479 U.S. 867 (1986).


23 Pursuant to statute, however, a district court is authorized to appoint counsel to represent a  
24 financially eligible defendant, moving under § 2255, whenever "the court determines that  
25 the interests of justice so require." See 18 U.S.C. § 3006A(a)(2)(B). Here, the interests of  
26 justice do not require appointment of counsel at this time. Defendant's pro se filings to date  
27 indicate he is able to adequately present his claims. Further, at this early stage of the  
28 proceedings, the Court is not in a position to determine whether an evidentiary hearing will

1 be required. See Knaubert, 791 F.2d at 728 (holding “[u]nless an evidentiary hearing is  
2 required, the decision to appoint counsel is within the discretion of the district court”).  
3 Should the circumstances change materially at a later stage of the proceedings, the Court  
4 will reconsider the issue. Accordingly, defendant's motion for appointment of counsel is  
5 hereby DENIED.

6 By the latter of the above two motions, defendant requests leave to “supplement”  
7 and file a “memorandum of law” in support of his “Motion to Set Aside and Vacate  
8 Sentence” pursuant to 28 U.S.C. § 2255. Good cause appearing, said request is hereby  
9 GRANTED. Defendant shall file his supplement no later than December 2, 2011.

10 **IT IS SO ORDERED.**

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12 Dated: October 28, 2011

  
MAXINE M. CHESNEY  
United States District Judge